

1 **WO**

2
3
4
5
6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9 Leonardo Tapia, Jr.,) No. CV-12-02393-PHX-FJM
10 Petitioner,) **ORDER**
11 vs.)
12)
13 C. DeRosa, Warden,)
14 Respondent.)
15 _____)
16

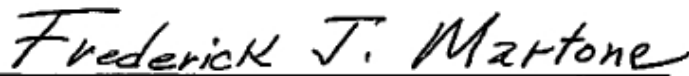
17 Before the court is petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C.
18 § 2241 (doc. 1), respondent's response (doc. 14), and the Report and Recommendation of the
19 United States Magistrate Judge recommending that the petition be denied for failure to
20 exhaust administrative remedies (doc. 20). Petitioner did not file objections to the Report
21 and Recommendation and the time for doing so has expired.

22 Petitioner claims that he is a United States citizen being unlawfully detained by
23 Immigration and Customs Enforcement. An immigration law judge concluded that the
24 Government had established petitioner's alienage as a Mexican citizen by "clear, convincing,
25 and unequivocal evidence," and ordered petitioner subject to removal. The immigration
26 judge denied petitioner's motion for reconsideration. On October 31, 2013, the Board of
27 Immigration Appeals ordered petitioner's case remanded for further proceedings, granting
28 petitioner the opportunity to submit additional evidence that is relevant to his claim of United

1 States citizenship. The Magistrate Judge recommends that, under the doctrine of prudential
2 exhaustion, petitioner should be required to exhaust his administrative remedies before
3 seeking habeas relief. Petitioner did not object to this recommendation.

4 We accept the recommended decision of the Magistrate Judge pursuant to 28 U.S.C.
5 § 636(b)(1). (Doc. 20). Accordingly, **IT IS ORDERED DISMISSING** the petition for writ
6 of habeas corpus (doc. 1).

7 DATED this 11th day of December, 2013.

8
9 

10 Frederick J. Martone
11 Senior United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28